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# A BILL FOR AN ACT

RELATING TO LIABILITY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. The legislature finds that the limitations on  
2 state and county liability have proven to be beneficial to the  
3 state and county governments, as well as the public. The  
4 liability protections have reduced the exposure of the state and  
5 county governments to substantial damages and, as a result, have  
6 allowed the state and county governments to keep recreational  
7 areas and public beach parks with potentially dangerous  
8 conditions open to the public. The legislature further finds  
9 that state and county compliance with the statutorily required  
10 public warning of dangerous conditions at recreational areas and  
11 public beach parks has contributed to an improvement in public  
12 safety in these areas, which justifies making the current  
13 liability exemptions for state and county governments relating  
14 to recreational areas and public beach parks and actions of  
15 county lifeguards permanent or extending their protections.

16 The legislature also finds that it is necessary to conform  
17 the statute of limitations for claims for damage and injury



1 against the counties with the limitations period applicable to  
2 the State and private individuals generally to ensure fair and  
3 consistent application of the law.

4 **PART I**

5 SECTION 2. The purpose of part I of this Act is to make  
6 permanent or to extend certain liability protections for state  
7 and county governments.

8 SECTION 3. Act 190, Session Laws of Hawaii 1996, as  
9 amended by Act 101, Session Laws of Hawaii 1999, as amended by  
10 Act 170, Session Laws of Hawaii 2002, is amended by amending  
11 section 7 to read as follows:

12 "SECTION 7. This Act shall take effect on July 1, 1996 [~~+~~  
13 ~~provided that this Act shall be repealed on June 30, 2007]~~."

14 SECTION 4. Act 170, Session Laws of Hawaii 2002, is  
15 amended by amending section 5 to read as follows:

16 "SECTION 5. This Act shall take effect upon its approval;  
17 provided that section 1 of this Act shall be repealed on June  
18 30, [~~2007-~~] 2010."

19 SECTION 5. Act 82, Session Laws of Hawaii 2003, is amended  
20 by amending section 8 to read as follows:

21 "SECTION 8. This Act shall take affect on July 1, 2003,  
22 and shall be repealed on June 30, [~~2008-~~] 2010."



1 SECTION 6. (a) There shall be established a task force  
2 within the department of the attorney general to examine the  
3 effectiveness of, collect sufficient data relating to, and  
4 provide to the legislature information on Act 190, Session Laws  
5 of Hawaii 1996, as amended; Act 170, Session Laws of Hawaii  
6 2002; and Act 82, Session Laws of Hawaii 2003.

7 (b) The task force shall include members as follows:

- 8 (1) The attorney general or the attorney general's  
9 designee as chair of the task force;
- 10 (2) The president of the Hawaii state association of  
11 counties or the president's designee;
- 12 (3) The mayor of the city and county of Honolulu or the  
13 mayor's designee;
- 14 (4) The mayor of the county of Maui or the mayor's  
15 designee;
- 16 (5) The mayor of the county of Hawaii or the mayor's  
17 designee;
- 18 (6) The mayor of the county of Kauai or the mayor's  
19 designee; and
- 20 (7) The executive director of the Consumer Lawyers of  
21 Hawaii or the executive director's designee.

22 (c) The task force shall:



- 1 (1) Collect data on and examine the effectiveness of  
2 providing lifeguards conditional liability protection  
3 for lifeguard services at state beach parks, except  
4 for gross negligence and wanton acts or omissions;
- 5 (2) Collect data on and examine the effectiveness and  
6 adequacy of warning signs at public beach parks in  
7 increasing public safety, reducing ocean-related  
8 accidents, and protecting the State and counties from  
9 unlimited liability with regard to activities in the  
10 ocean and at public beaches; and
- 11 (3) Collect data on and examine the effectiveness and  
12 adequacy of warning signs at public recreational lands  
13 in increasing public safety, and protecting the State  
14 and counties from unlimited liability arising out of  
15 recreational activities on public lands.
- 16 (d) The task force shall submit its findings and  
17 recommendations, including any proposed legislation, to the  
18 legislature no later than twenty days prior to the convening of  
19 the 2009 regular session.

20 **PART II**

21 SECTION 7. The purpose of part II of this Act is to  
22 conform the statute of limitations for injuries or damages



1 involving counties with the limitations applicable generally to  
2 the State and private citizens.

3 SECTION 8. Section 46-72, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§46-72 Liability for injuries or damages; notice [of**  
6 **injuries**]. Before the county shall be liable for damages to any  
7 person for injuries to person or property received upon any of  
8 the streets, avenues, alleys, sidewalks, or other public places  
9 of the county, or on account of any negligence of any official  
10 or employee of the county, the person [~~se~~] injured, or the owner  
11 or person entitled to the possession, occupation, or use of the  
12 property [~~se~~] injured, or someone [~~in~~] on the person's behalf,  
13 [~~shall~~], within [~~six months~~] two years after the injuries [~~are~~  
14 ~~received~~], accrued shall give the individual identified in the  
15 respective county's charter, or if none is specified, the  
16 chairperson of the council of the county or the [~~city~~] clerk of  
17 [~~Honolulu~~] the county in which the injuries occurred, notice in  
18 writing of the injuries and the specific damages resulting,  
19 stating fully [~~in the notice~~] when, where, and how the injuries  
20 or damage occurred, the extent [~~thereof~~], of the injuries or  
21 damages, and the amount claimed [~~therefor~~]."

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## PART III



1 SECTION 9. The purpose of part III of this Act is to  
2 authorize the State to indemnify the counties, under certain  
3 circumstances.

4 SECTION 10. Chapter 46, Hawaii Revised Statutes, is  
5 amended by adding a new section to be appropriately designated  
6 and to read as follows:

7 "§46- Indemnification of county agencies. (a) To  
8 receive county aid, assistance, support, benefits, services, and  
9 interests in or rights to use county property, a state agency  
10 may agree in writing to an indemnity provision by which the  
11 State agrees to indemnify, defend, and hold harmless a county  
12 agency, its officers, agents, and employees when:

- 13 (1) The governor approves the State's proposed  
14 indemnification; and
- 15 (2) The comptroller, pursuant to section 41D-8.5, has  
16 obtained an insurance policy or policies in an amount  
17 sufficient to cover the liability of the State that  
18 reasonably may be anticipated to arise under the  
19 indemnity provision, or has determined that it is not  
20 in the best interest of the State to obtain insurance.

21 (b) An indemnity provision not in strict compliance with  
22 this section shall not give rise to a claim against the State



1 under chapter 661 or otherwise waive the State's sovereign  
2 immunity."

3 SECTION 11. Section 41D-8.5, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§41D-8.5 Insurance for indemnification.** The comptroller  
6 may:

7 (1) Obtain sufficient loss insurance to cover the  
8 liability of the State that may arise from indemnity  
9 provisions agreed to pursuant to section 29-15.5;

10 [and]

11 (2) Obtain sufficient loss insurance to indemnify, defend,  
12 and hold harmless a county providing assistance,  
13 services, rights, or permission to use county property  
14 to a state agency under an indemnity agreement  
15 provision pursuant to section 46- ; and

16 ~~[(2)]~~ (3) Obtain appropriate and sufficient reinsurance to  
17 cover the liability of a captive insurance company  
18 established pursuant to section 41D-2."

19 **PART IV**

20 SECTION 12. This Act does not affect rights and duties  
21 that matured, penalties that were incurred, and proceedings that  
22 were begun, before its effective date.



1 SECTION 13. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 14. This Act shall take effect upon its approval;  
4 provided that sections 2, 3 and 4 of this Act shall take effect  
5 June 29, 2007.





**Report Title:**

Government Liability

**Description:**

Extends certain automatic repeal dates of provisions that provide state and county governments liability protection for public use of certain state or county recreational areas; extends the statute of limitation for actions against a county for damage or injury. Allows the State to indemnify counties when a state agency uses county facilities or avails itself of county aid or support. (CD1)

